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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/086,857

Filing Date: May 29, 1998

Appellant(s): FREDERICK ET AL.

Ralph E. Jocke
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/16/2008 appealing from the Office action mailed 7/31/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. The appellant's brief contains a statement identifying related appeals or interferences.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The copy of the appealed claims contained in the Appendix to the brief is correct.

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 5,572,873	Lavigne	11-1996
		(filed 3-1995)
US 5,520,450	Colson, Jr. et al.	5-1996
		(priority 1-1993)
US 4,847,764	Halvorson	7-1989
US 5,805,456	Higham	7-1994
US 5,377,864	Blechl et al.	3-1995
		(3-1992 filing)
US 5,562,232	Pearson	10-1996
		(priority 8-1991)
US 5,292,029	Pearson	3-1994

(filed 8-1991)

US 4,674,652 Aten et al. 6-1987

US 5,346,297 Colson, Jr. et al. 9-1994

(filed 1-1993)

US 5,408,443 Weinberger 4-1995

US 5,781,442 Engleson 7-1998

(filed 5-1995)

US 5,225,825 Warren 7-1993

US 6,039,467 Holmes 3-2000

(12-1996 priority)

US 4,857,716 Colson, Jr. et al. 8-1989

US 4,125,008 Genest 11-1978

US 5,314,243 McDonald et al. 5-1994

(filed 12-1992)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

Claims 27-43 are rejected under 35 U. S. C. 112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is insufficient basis in the claim(s) (Re: cl 27) for the limitation “the determination that the medical item is stored in the interior area”

(Re: cl 31) There are a plurality of locations that might be described as “other locations” with no way of distinguishing which one is the “other” being specified.

Claim Rejections - 35 USC § 102

Lavigne

Claims 1, 3, 9, 27, 44, 31, 32, 33, 36, 37, 38, 42-43 and 24-25 and 49-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Lavigne et al.. Lavigne et al.. discloses: (re: cl 1, 24) a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 10 L 27-61, the supervisor id is recognized , compared and the computer is operable contingent upon that comparison (col. 6 L 20-59); the interface includes an input device (col. 5 L 50-65); a refrigerator wherein a storage location for at least one medical item is located in an interior area of the refrigerator, the

refrigerator including a door (21; c3 L 39-50; col. 7 L 36-52); a lock module operatively attached to the refrigerator, the lock responsive to the computer (col. 11 L 39-43); the input device of the interface corresponding to the data representative of an authorized user stored in the data store (col. 10 L 27-39), the computer enabling user to input indicia corresponding to the medical item (col. 9 L 17-34), the computer operative to output a signal which changes the lock (col. 11 L 39-43; col. 8 L 59-62); computer is operative responsive to input of the item indicia to unlock the module (col. 8 L 24-30; col. 8 L 58-59)

(Re: cl 3) door is operative to generate an open signal responsive to the door opening, computer is operative to the open signal to change the lock module to the locked condition (col. 6 L 47-56); the computer operative responsive to the lock condition to change the condition of the lock (col. 8 L 60-62; Fig. 5, #113; Fig. 3, #118 & 139;

(re: cl 25) door sensor, a latching device for selectively maintaining the lock module in the locked and unlocked conditions (col. 6 L 47-56; col. 7L 10-35);

(Re: cl 9) door opening sensor signaling data store (col. 6 L 47-56);

(Re: cl 27, 44) attaching a lock module to a refrigerator, placing a medical item in the interior or the refrigerator door (col. 7 L 36-52), storing data associated

with the medical item, imputing medical item type, determining type of medical item in interior, generating signal determinative that a medical item is stored in the interior, enabling access to the interior of the computer (col. 7 L 36-52);

(Re: cl 31) placing medical items in plurality of storage locations, at least one in the interior and at least one exterior and storing data representative of the medical items stored (col. 9 L 17-34);

(Re: cl 32) the first item is placed in the storage location in the interior and a second item is placed in the other locations (col. 7 L 36-52),

(Re: cl 33) other location is in dispenser, inputting the type of item stored, determining that the second type of medical item is stored in dispenser, generating a second signal responsive to the determination second type is in dispenser (col. 6 L 20-59);

(Re: cl 36) opening refrigerator door, sensing door opened (col. 6 L 47-56; col. 7L 10-35);

(Re: cl 37, 42) storing authorized users, comparing whether authorized user as a contingency to opening refrigerator (col. 10 L 27-39),

(Re: cl 38,43) data stored representative of an authorized user (col. 10 L 27-39)

(Re: cl 49) opening of the specified door is prevented whilst locked and enabled precluded when unlocked permitting content access (c3 L 40-49;c14 L 32-45)

(Re: cl 50) opening of the specified drawer is prevented whilst locked and enabled precluded when unlocked permitting content access (c3 L 40-49;c14 L 32-45).

Higham et al. '456

Claims 1, 4, 12-15, 21, 24, 27-29, 31-33, 39, 41 and 44 and 48 and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Colson, Jr. et al. '450. Colson, Jr. et al. '450 discloses: (Re: cl 1, 24, 48) a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 5 L 17-29; Fig. 1, #21); the interface includes an input device (col. 5 L 17-29); a refrigerator wherein a storage location for at least one medical item is located in an interior area of the refrigerator, the refrigerator including a door (col. 3 L 1-16; col. 6 L 32-67; Fig. 1, #25); a lock module operatively attached to the refrigerator, the lock responsive to the computer (col. 2 L 50-55; col. 5 L 20-25; col. 6 L 48-67); the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical

item (col. 5 L 20-40), the computer operative to output a signal which changes the lock (col. 5 L 20-25) the computer is operative responsive to input of the item indicia to unlock the module; computer is operative to the open signal to change the lock module to the locked condition (col. 6 L 47-56);

(Re: cl 4) lock has manual unlocking mechanism armed to unlock when the lock is enabled (c4 L 65-c5L 15)

(Re: cl 12) lock module mounted in support of external surface with of refrigerator bolt (41) connecting external surface of door lock (c4 L 65-c5L 15)

(Re: cl 13) bolt 41 attached to front surface and side door (c4 L 65-c5L 15)

(Re: cl 14) bolt attached to door through bracket (57)

(Re: cl 15) bolt supporting bracket connected to door by fasteners (the screws)

(Re: cl 21) lock module locks when door closed (c5L 6-15, spring biased).

(Re: cl 27, 44) attaching a lock module to a refrigerator, placing a medical item in the interior or the refrigerator, storing data associated with the medical item, imputing medical item type, determining type of medical item in interior, generating signal determinative that a medical item is stored in the interior,

enabling access to the interior of the computer (col. 3 L 1-16; col. 6 L 32-67; Fig. 1, #25);

(Re: cl 28) attaching lock to exterior of a body and a bolt supporting bracket to an exterior of the door (attached via screws)

(Re: cl 29) attaching bolt supporting bracket to exterior with at least one fastener and covering fastener with a cover (c4 L 65-c5L 15)

(Re: cl 31) placing medical items in plurality of storage locations, at least one in the interior and at least one exterior and storing data representative of the medical items stored

(Re: cl32) the items is placed in the storage location in the interior and a second item is placed in the other locations (col. 3 L 1-16; col. 6 L 32-67; Fig. 1, #25)

(Re: cl 33) other location is in dispenser, inputting the type of item stored, determining that the second type of medical item is store in dispenser, generating a second signal responsive to the determination second type is in dispenser (col. 3 L 1-16; col. 6 L 32-67; Fig. 1, #25)

(Re: cl 39) manually actuating the unlocking mechanism and accessing the interior (c4 L 65-c5L 15)

(Re: cl 50) opening of the specified drawer is prevented whilst locked and enabled precluded when unlocked permitting content access (c2 L 38-55).

Colson '297

Claims 45 and 48 and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Pearson '232. Pearson '232 discloses: a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 4 L 60-col. 5 L 5 with col. 6 L 18-23); the interface includes an input device (col. 53 L 5-20); a lock in operative connection with the computer, the lock is responsive to the computer (col. 3 L 22-38); the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item (col. 4 L 33-49), the computer operative to output a signal which changes the lock (col. 5 L 1-8) the computer is operative responsive to input of the item indicia to unlock the module (col. 6 L 6-18); computer is operative to the open signal to change the lock module to the locked condition (col. 6 L 47-56)

(Re: cl 50) opening of the specified drawer is prevented whilst locked and enabled precluded when unlocked permitting content access (c5 L 48-61).

Higham et al. '456

Claims 46 and 48 and 50 is rejected under 35 U.S.C. 102(e) as being anticipated by Higham '456. Higham '456 discloses: (base claim) a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 13 L 30-41); the interface includes an input device (col. 13 L 11-40; col. 10 L 46-53); a lock in operative connection with the computer, the lock is responsive to the computer (col. 10 L 11-29); the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item (col. 13 L 11-30), the computer operative to output a signal which changes the lock (col. 13 L 11-30) the computer is operative responsive to input of the item indicia to unlock the module (col. 13 L 11-30); computer is operative to the open signal to change the lock module to the locked condition (col. 14 L 40-45);

(re:cl 46) the lock comprises a visual indicator (col. 11 L 41-65)

(Re: cl 49) opening of the specified door is prevented whilst locked and enabled precluded when unlocked permitting content access (c6 L 6-23)

(Re: cl 50) opening of the specified drawer is prevented whilst locked and enabled precluded when unlocked permitting content access (c6 L 6-23).

Colson, Jr. et al. '297

Claim 45 is rejected under 35 U.S.C. 102(b) as being anticipated by Colson, Jr. et al. '297. Colson, Jr. et al. '297 discloses: a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users, the interface includes an input device, a lock in operative connection with the computer, the lock is responsive to the computer, the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item, the computer operative to output a signal which changes the lock the computer is operative responsive to input of the item indicia to unlock the module, computer is operative to the open signal to change the lock module to the locked condition (col. 4 L 39-53).

Lavigne and Aten

Claims 2 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavigne et al., as further evidenced by Nemoto, Keskin et al. , and Tabata in rebuttal to applicant's official notice challenge that the use of permanent magnets

in solenoids was not well known in the art. Lavigne et al. discloses the elements previously discussed and further discloses: (Re: cl 2) a visual indicator proximate the lock (col. 11 L 3-43); the lock has a solenoid (col. 7 L 24-26). It would have been obvious to place the visual indicator on the lock as a matter of design choice because proximate rather than precise mounting location of a visual indicator is sufficient to indicate to the user the identification of the location of the lock corresponds with the compartment(s) and the status of the lock corresponds with the compartment access commands from the computer. The examiner takes official notice that the use of permanent magnets in solenoids is well known. It would have been obvious to make the solenoid with a permanent magnet because such a construction averts the need for plural windings.

As per applicant's challenge of permanent magnet solenoids not being well known in the dispensing art, the examiner cites in rebuttal Nemoto (abstract), Keskin et al. (abstract), Tabata (abstract) as showing permanent magnets being well known in solenoids.

Higham et al. '456

Claims 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higham et al. '456. Higham et al discloses the elements previously disclosed and further discloses: (re:cl 47) the lock comprises a door sensor, the door sensor is

operative to generate an open signal responsive to opening the door (col. 11 L 23-41).

Higham et al ‘456 impliedly suggests the computer is operative responsive to the open signal to change the lock to the locked condition whenever the door is closed (col. 10 L 11-29; col. 13 L 44-59). As the processor of Higham et al ‘456 only permits one door open a time and the button opening embodiment necessitates a button being pressed before opening, it is suggested that all doors will be locked upon closure. It would have been obvious for the processor of Higham et al ‘456 to lock the door upon closure to avoid the confusion prone with multiple drawers open as suggested and taught by Higham et al ‘456.

Lavigne and Aten

Claims 1, 3, and 24-26 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavigne et al. in view of Aten et al.. Lavigne et al. discloses the elements previously disclosed and further discloses: the lock has a solenoid (col. 7 L 24-26). It would have been obvious to make the refrigerated dispenser of Laviue et al. with a solenoid having a permanent magnet because a construction averts the need for plural windings as taught by Aten et al. (col. 9 L 1-30).

Colson ‘450 and Lavigne

Claims 1-3 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colson, Jr. et al. ‘450 in view of Lavigne et al. Colson, Jr. et al. ‘450 discloses the elements previously disclosed and further discloses: a latching device for selectively maintaining the lock module in the locked and unlocked conditions (col. 5 L 6-16 ; col. 8 L 24-30; col. 8 L 58-59); visual indicators corresponding to each compartment which is unlocked by the locks (col. 7 L .35-46). Colson, Jr. et al. ‘450 does not disclose: a door sensor; door is operative to generate an open signal responsive to the door opening, the visual indicator is located on the lock. Lavigne et al. discloses a door sensor with the door operative to generate an open signal responsive to the door opening. It would have been obvious to substitute location of the visual indicator to the lock as a matter of design choice because proximate placement of a visual indicator is sufficient to indicate to the user the location of the compartment(s) and the status of the lock corresponds with the compartment access commands from the computer (col. 6 L 47-56; col. 7L 10-35). It would have been obvious to use a sensor to detect the opening of the door as a means of saving power and recording removal of the item as taught by Colson, Jr. et al. ‘450.

Blechl and Weinberger

Claims 45-47 and 49-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blechl in view of Weinberger. Blechl discloses: (re cl 45,48) a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 4 L 20-38); the interface includes an input device (col. 4 L 39-50); a lock in operative connection with the computer, the lock is responsive to the computer (col. 4 L 39-50); the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item (col. 4 L 39-50), the computer operative to output a signal which changes the lock (col. 9 L 44-55) the computer is operative responsive to input of the item indicia to unlock the module (col. 9 L 36-55); computer is operative to the open signal to change the lock module to the locked condition (col. 4 L 39-55)

(Re: cl 49) opening of the specified door is prevented whilst locked and enabled precluded when unlocked permitting content access (c4 L 39-58; c5 L 22-27 separately discloses a door 44 with computer controlled latch)

(Re: cl 50) opening of the specified drawer is prevented whilst locked and enabled precluded when unlocked permitting content access (c4 L 39-58)

. Weinberger discloses any claimed elements not explicitly taught by Blechl including:

(re:cl 46) the lock comprises a visual indicator (col. 7 L 13-34) ;

(re:cl 47) the lock comprises a door sensor, the door sensor is operative to generate an open signal responsive to opening the door, the computer is operative responsive to the open signal to change the lock to the locked condition whenever the door is closed (col. 13 L 20-30)

. It would have been obvious for Blechl to include a visual indicator as a part of a lock module because a visual signal can direct the user to the correct door/drawer as taught by Weinberger. It would have been obvious for Blechl to have the computer to lock the door responsive to a sensor indicating door closure because locking the door can reduce unauthorized access as taught by Weinberger.

Lavigne and Engleson

Claims 16-20 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavigne et al in view of Engleson et al. wherein Lavigne et al. discloses the elements previously discussed and Engleson et al. discloses any elements not explicitly taught by Lavigne et al. including:

(Re: cl 16) reading device for reading item indicia (90)

(Re: cl17) refrigerator includes machine readable indicia (c6 L 14-25)

(Re: cl18) report having machine readable indicia item indicia by reading machine readable indicia (c12 L 45-65)

(Re: cl19) printer for generating a report (c9 L 30-34; c6 L 14-25)

(Re: cl20) at least one machine readable indicia (c6 L 14-25)

(Re: cl 34) labeling the refrigerator with machine readable indicia, reading the indicia with a reading device (c6 L 14-25).

(Re: cl 35) reading a bar code scanner (c6 L 14-25).

It would have been obvious at the time of the invention for Lavigne et al. to use a reader device and indicia on a dispenser to automatically input what medication is being removed from where items are being removed and reading bar code reduces the chance of human entered error as taught by Engleson et al.. It would have been obvious at the time of the invention for Lavigne et al. to generate a report for tracking patient care and optimize treatment and to generate machine readable indicia to easily identify the report as taught by Engleson et al..

Colson '450 and Iwamoto

Claims 4-8 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colson, Jr. et al. '450 in view of Iwamoto et al. wherein Colson, Jr. et al. '450

discloses the elements previously discussed and Iwamoto et al. discloses any elements not explicitly taught by Colson, Jr. et al. '450 including:

(Re: cl 4) lock has manual unlocking mechanism armed to unlock when the lock is enabled (c2 L 30-45)

(Re: cl 5) lock module has a movable lever (34), catch (33), pawl (32a)

(Re: cl 6) lever 4 pivots, and is engaged by a solenoid (c4 L 4-9)

(Re: cl 7) catch has tapered step on lever (33a)

(Re: cl 8) unlocking mechanism includes cylinder and projection for engaging lever (8)

(Re: cl 40) first mechanism engages lever on first side of pivot (c4 L 1-21).

It would have been obvious at the time of the invention for Colson, Jr. et al. '450 to substitute a lock constructed with solenoid activated pivoting lever, catch with taper step, and pawl to positive release electrically activated of the solenoid triggering the latch release of the door as taught by Iwamoto et al..

It would have been obvious at the time of the invention for Colson, Jr. et al. '450 to include a cylinder as backup for electrical failure as taught by Iwamoto et al.. It would have been obvious at the time of the invention for Colson, Jr. et al. '450 to engage a lever to open the locking mechanism with reduced power through such a mechanical ratiometric force reducing device as taught by Iwamoto et al..

Colson Jr., et al. ‘450 and Warren

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Colson, Jr. et al. ‘450 in view of Warren wherein Colson, Jr. et al. ‘450 discloses the elements previously discussed and Warren discloses any elements not explicitly taught by Colson, Jr. et al. ‘450 including:

(Re: cl 23) lock module includes a retrofit assembly (116).

It would have been obvious at the time of the invention for Colson, Jr. et al. ‘450 to substitute its built in lock with a retrofit kit lock as retrofit locks can be placed on a unit after failure as taught by Warren.

Colson Jr. et al. ‘450 and Holmes

Claims 9, 16-17, 20 and 22 and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colson, Jr. et al. ‘450 in view of Holmes ‘467 wherein Colson, Jr. et al. ‘450 discloses the elements previously discussed and Holmes ‘467 discloses any elements not explicitly taught by Colson, Jr. et al. ‘450 including:

(Re: cl 9) door opening sensor signaling data store (c 8L12-15)

(Re: cl 22) unlock condition has a timeout return to locked condition (c8 L25-30)

(Re: cl 16) reading device for reading item indicia (c6 L19-25)

(Re: cl 17) dispenser includes machine readable indicia (c6 L19-25)

(Re: cl 20) at least one machine readable indicia (c6 L19-25).

(Re: cl 34) labeling the dispenser with machine readable indicia, reading the indicia with a reading device (c6 L19-25; c9 L 22-40)

(Re: cl 35) reading a bar code scanner (c6 L19-25; c9 L 22-40)

It would have been obvious at the time of the invention for Colson, Jr. et al. ‘450 to use a reader device and indicia on dispenser to automatically input what medication is being removed and from where items are being removed as taught by Holmes ‘467.

It would have been obvious at the time of the invention for Colson, Jr. et al. ‘450 to have a lock release timeout to secure contents from an apparent subsequently unattended dispenser as taught by Holmes ‘467.

Lavigne and Holmes

Claims 9, 16-17, 20, 22, 34-35 and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavigne et al. in view of Holmes ‘467 wherein Lavigne et al. discloses the elements previously discussed and Holmes ‘467 discloses any elements not explicitly taught by Lavigne et al. including:

(Re: cl 9) door opening sensor signaling data store (c 8L12-15)

(Re: cl 22, 42) unlock condition has a timeout return to locked condition (c8 L25-30)

(Re: cl 16) reading device for reading item indicia (c6 L19-25)

(Re: cl 17) dispenser includes machine readable indicia (c6 L19-25)

(Re: cl 20) at least one machine readable indicia (c6 L19-25).

(Re: cl 34) labeling the dispenser with machine readable indicia, reading the indicia with a reading device (c6 L19-25)

(Re: cl 35) reading a bar code scanner (c6 L19-25).

It would have been obvious at the time of the invention for Lavigne et al. to use a reader device and indicia on dispenser to automatically input what medication is being removed and from where items are being removed as taught by Holmes '467. It would have been obvious at the time of the invention for Lavigne et al. to have a lock release timeout to secure contents from an apparent subsequently unattended dispenser as taught by Holmes '467.

It would have been obvious at the time of the invention for Lavigne et al. to use a reader device and indicia on a dispenser, to automatically input what medication is being removed from where items are being removed and reading bar code reduces the chance of human entered error as taught by Holmes '467. It would have been obvious at the time of the invention for Lavigne et al. to use

labels with indicia so that medication data can be prepared when the prescribe regimen is filled as taught by Holmes ‘467.

Halvorson and McDonald ‘243

Claims 45 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halvorson in view of McDonald ‘243.

Halvorson discloses:

(re cl 45,48 base) a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 4 L 20-38; col. 2 lines 37-61); the interface includes an input device (20); the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item (col. 3 line 47-column 4 line 32), Computer controlled access door (40; C3 L 53-60)

McDonald ‘243 discloses any claimed elements not explicitly taught by Halvorson including:

the computer operative to output a signal which changes the lock (40) the computer is operative responsive to input of the item indicia to unlock the module,

computer is operative to the open signal to change the lock module (40) to the locked condition (col. 2 Lines 46-61);

It would have been obvious for Halvorson to have the computer to lock the door or a respective drawer responsive to a sensor indicating door closure because locking the door can reduce unauthorized access as taught by McDonald '243.

Halvorson and Weinberger.

Claims 46-47, 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halverson in view of Weinberger. Halvorson discloses the elements previously discussed and further discloses:

(re base 45, 48) a computer in operative connection with a data store, data store includes user data representative of a plurality of authorized users (col. 4 L 20-38); the interface includes an input device (col. 4 L 39-50); the input device of the interface corresponding to the data representative of an authorized user stored in the data store, the computer enabling user to input indicia corresponding to the medical item (col. 4 L 39-50); Computer controlled access door (40; C3 L 53-60).

Weinberger discloses any elements not explicitly taught by Halvorson including:

a lock in operative connection with the computer, the lock is responsive to the computer (col. 4 L 39-50); the computer operative to output a signal which changes the lock (col. 9 L 44-55) the computer is operative responsive to input of the item indicia to unlock the module (col. 9 L 36-55); computer is operative to the open signal to change the lock module to the locked condition (col. 4 L 39-55).

(re:cl 46) the lock comprises a visual indicator (col. 7 L 13-34) ;

(re:cl 47) the lock comprises a door sensor, the door sensor is operative to generate an open signal responsive to opening the door, the computer is operative responsive to the open signal to change the lock to the locked condition whenever the door is closed (col. 13 L 20-30)

(Re: cl 49) opening of the specified door is prevented whilst locked and enabled precluded when unlocked permitting content access (col. 4 L 39-50)

It would have been obvious for Halvorson to have the computer to lock the door responsive to a sensor indicating door closure because locking the door can reduce unauthorized access as taught by Weinberger. It would have been obvious for Halvorson to have the computer to lock the drawer responsive to a sensor indicating drawer closure because locking the door can reduce unauthorized access as taught by Weinberger. It would have been obvious for Halvorson to include a

visual indicator as a part of a lock module because a visual signal can direct the user to the correct door/drawer as taught by Weinberger.

Colson '450 and Gombrich

Claims 16-20 and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colson, Jr. et al. '450 in view of Gombrich et al. wherein Colson, Jr. et al. '450 discloses the elements previously discussed and Iwamoto et al. discloses any elements not explicitly taught by Colson, Jr. et al. '450 including:

(Re: cl 16) reading device for reading item indicia (c8 L 4-30)

(Re: cl 17) refrigerator includes machine readable indicia (c8 L 4-30)

(Re: cl 18) report having machine readable indicia item indicia by reading machine readable indicia (c8 L 4-30)

(Re: cl 19) printer for generating a report (c8 L 4-30)

(Re: cl 20) at least one machine readable indicia (c8 L 4-30)

(Re: cl 34) labeling the refrigerator with machine readable indicia, reading the indicia with a reading device (c8 L 4-30)

(Re: cl 35) reading a bar code scanner (c8 L 4-30).

It would have been obvious at the time of the invention for Colson, Jr. et al. '450 to use a reader device and indicia on a dispenser to automatically input what

medication is being removed and from where items are being removed as taught by Gombrich et al..

It would have been obvious at the time of the invention for Colson, Jr. et al. ‘450 to generate a report for tracking patient care and optimize treatment and to generate machine readable indicia to easily identify the report as taught by Gombrich et al..

It would have been obvious at the time of the invention for Colson, Jr. et al. ‘450 to use a reader device and indicia on a dispenser, to automatically input what medication is being removed from where items are being removed and reading bar code reduces the chance of human entered error as taught by Gombrich et al.. It would have been obvious at the time of the invention for Colson, Jr. et al. ‘450 to use labels with indicia so that medication data can be prepared when the prescribe regimen is filled as taught by Gombrich et al..

Lavigne and Iwamoto

Claims 4-11 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavigne et in view of Iwamoto et al. wherein Lavigne et al. discloses the elements previously discussed as well as

(Re: cl 11) bolt goes through door (c3 L 38-50)

and Iwamoto et al. discloses any elements not explicitly taught by Lavigne et including:

(Re: cl 10) lock module has a movable lever (34), catch (33), pawl (32a) and lever is engaged by a solenoid (c4 L 4-9)

(Re: cl 4) lock has manual unlocking mechanism armed to unlock when the lock is enabled (C3 L 24-28)

(Re: cl5) lock module has a movable lever (34), catch (33), pawl (32a)

(Re: cl6) lever 4 pivots, and is engaged by a solenoid (c4 L 4-9)

(Re: cl7) catch has tapered step on lever (33a)

(Re: cl8) unlocking mechanism includes cylinder and projection for engaging lever (8)

(Re: cl 21) lock module locks when door closed (c3 L 25-31).

It would have been obvious at the time of the invention for Lavigne et al. to substitute a lock constructed with solenoid activated pivoting lever, catch with taper step, and pawl to positive release electrically activated of the solenoid triggering the latch release of the door as taught by Iwamoto et al..

It would have been obvious at the time of the invention for Lavigne et al. to lock the door upon closing to secure contents as taught by Iwamoto et al..

Lavigne and Genest

Claims 11-15 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavigne et al. in view of Genest et al. wherein Lavigne et al. discloses the elements previously discussed as well as

(Re: cl 11) bolt goes through door (c3 L 38-50)

and Genest et al. discloses any elements not explicitly taught by Lavigne et al. including:

(Re: cl 23) lock module includes a retrofit assembly (abstract-unitary self contained

(Re: cl 12) lock module mounted in support of external surface with bolt connecting external surface of door with lock (c9 L 22-30)

(Re: cl 13) bolt attached to front surface and side door (c10 L 48-69)

(Re: cl 14) bolt attached to door through bracket (c10 L 48-69)

(Re: cl 15) bolt supporting bracket connected to door by fasteners (c10 L 48-69).

It would have been obvious at the time of the invention for Lavigne et al. to substitute its built in lock with a retrofit kit lock as retrofit locks can be placed on a unit after failure as taught by Genest et al.. It would have been obvious at the time

of the invention for Lavigne et al. to operationally attach the bolt to the front door as external mounting arrangement is easy to mount and does not reduce the amount of interior storage space consumed as taught by Genest et al..

Colson, Jr. et al. 450 and MacDonald

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Colson et al. '450 in view of McDonald '243. Colson et al. '450 discloses the elements previously disclosed and further discloses: McDonald '243 discloses any elements not explicitly taught by Colson et al. '450 including:

the computer operative to output a signal which changes the lock (40) the computer is operative responsive to input of the item indicia to unlock the module, computer is operative to the open signal to change the lock module (40) to the locked condition (col. 2 Lines 46-61).

It would have been obvious for Colson et al. '243 to have the computer to lock the door responsive to a sensor indicating door closure because locking the door can reduce unauthorized access as taught by McDonald '243.

Colson, Jr. et al. '450 and Weinberger

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Colson et al. '450 in view of Weinberger. Colson et al. '450 discloses the elements previously disclosed and further discloses: Weinberger discloses any elements not explicitly taught by Colson et al. '450 including

(Re: cl 41) sensing that the door is open and changing the lock condition to lock responsive to the sensor sensing the door is open so that the door is locked upon closing (col. 13 L 20-30;c 12 L 64-69)

(re: cl 30) the lock comprises a visual indicator (col. 7 L 13-34).

It would have been obvious for Colson et al. '450 to include a visual indicator as a part of a lock module because a visual signal can direct the user to the correct door/drawer as taught by Weinberger. It would have been obvious for Colson et al. '450 to have the computer to lock the door responsive to a sensor indicating door closure because locking the door can reduce unauthorized access as taught by Weinberger.

Colson and Higham et al. '456

Claims 30 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colson et al. '450 in view of Higham et al. '456. Colson et al. '450 discloses

the elements previously disclosed and further discloses: Higham et al. ‘456 discloses any elements not explicitly taught by Colson et al. ‘450 including (Re: cl 41) sensing that the door is open and changing the lock condition to lock responsive to the sensor sensing the door is open so that the door is locked upon closing (col. 10 L 11-29; col. 13 L 44-59); (re: cl 30) the lock comprises a visual indicator (col. 11 L 23-41).

It would have been obvious for Colson et al. ‘450 to include a visual indicator as a part of a lock module because a visual signal can direct the user to the correct door/drawer as taught by Higham et al. ‘456. It would have been obvious for Colson et al. ‘450 to have the computer to lock the door responsive to a sensor indicating door closure because locking the door can reduce unauthorized access as taught by Higham et al. ‘456.

(10) Response to Argument

The applicant’s arguments have been fully considered regarding the prior art but they are unpersuasive in overcoming the rejections

Affidavit

As noted by the Board, the evidence submitted with the affidavit, fails to 1) show evidence documenting the asserted activities leading to the alleged reduction

to practice or (2) satisfactory explanation for the absence of such evidence. The evidence fails to disclose a door.

As pointed out by the Board, the affidavit has been signed only by inventor R. Michael McGrady in conflict with eight named inventors of the declaration. Accordingly, acceptance of the 131 affidavit on claims 24 and 45 filed 9/27/2000 was withdrawn, the 131 affidavit filed 5/23/2000 was likewise further rejected for the same reasons.

Declaration

As raised by the Board, the differing information presented in the 131 affidavits in contrast to the declaration suggests either one or both the 131 affidavit or declaration has misidentified inventors. Accordingly, the declaration is objected to as being defective for misidentification of inventors.

Priority

A CIP priority claim requires that there be at least one common inventor between the parent application and the application in which priority is claimed to each application in the priority chain. As the Board has raised new doubt on inventorship, the priority claims are being denied, pending any such applicant rebuttal of the lack of common inventors.

There is a further requirement that a claim is entitled to benefit of priority to an earlier filed application via a CIP link only if each element of the claim was present in the earlier application. As the Board has pointed out, the door claimed in claims 1, 24, and 45 is absent in application 08/361783. As such, those claims with the door are not entitled to the priority filing date of application 08/361783.

However, given the remaining rejections on independent claims 1, 24, and 45 coupled with a spectrum of varied dates that may be antedated or that applicant responses may result in those claims being antedated or the possibility applicant may elect to amend out subject matter not entitled to priority benefit in deference to achieving such priority benefit, the office elects to rely upon the chronologically stronger references used in appeal rather than the most easily antedated art, so reinstatement of the rejections withdrawn per the affidavit was not elected.

The applicant's voluminous arguments have been carefully considered by the examiner but are insufficient in overcoming the rejections in view of the prior art.

The Cited Art is Prior Art with Respect to the Claims on which Rejections were

Asserted

The applicant attempts to rely upon a CIP priority to bring the priority date of previously rejected claim 24 and newly added claim 45 of the instant application

to less than one year subsequent the publication date of the applied references.

However the applicant is entitled to the priority date of a parent of a CIP only with respect to matter present in the parent application.

In sharp contrast to applicants assertion on page 26 of his brief, claim 24 is not similar in scope to claim 45. Claim 24 lacks elements the parent application does not have such as a lock module mounted to the exterior surface of the housing structure-so claim 24 does not benefit from the filing date of the parent application as claim 24 has elements not in the continuation chain of priority. As the refrigeration elements were not found in the parent of this CIP application, applicant is not entitled to benefit of the priority date of the parent application on those claims having the cooling unit. As such the 102(b) reference date status of the cited art has not been antedated. Demonstrating the presence of the elements of claim 45 in the parent application does not cure the absence of the elements of claim 24 from the priority chain.

With respect to Colsom, Jr et al. '450 applicant has merely attempted to swear behind the filing date of the reference and not the priority date of the reference. If applicant had been able to and had identified that his claimed subject matter had a priority date which would shift the reference to a 102(e) status, the applicant would need swear behind the priority date of the reference. The

applicant has merely attempted to swear behind the 1994 filing date of the Colson, Jr. et al.'450 reference rather than the 1993 priority date of Colson, Jr. et al.'s parent application, Colson, Jr. et al. '297. Each claim has its own independent invention date, and a subsequently invented dependent claim does not inherit its base claim's invention date nor does it inherit its base claims chain of subject matter to an earlier application if that matter was not present in the earlier applications in the chain or priority. Colson, Jr. et al. improved upon its parent CIP application with its own refrigeration system, not an element necessary to antedate claim 45 and constitute a prior art reference. As applicant did not attempt to swear behind the priority date of Colson, Jr., et al. '297 he has not antedated Colson, Jr. et al. '450 as a reference to the no refrigeration claim 45.

As applicant added the material of claim 24 to his application chain in the instant application, so claim 24 is not entitled to an earlier priority date than the filing date of the instant application. Therefore with respect to claim 24, the filing date of the application is the effective date in determination of the filing relative 102(b) references. As the applied references directed at claim 24 published more than a year before applicant's filing date, the applied references have a 102(b) or 103(a)/102(b) prior art basis, so the 131 affidavit may not be used to antedate those references.

As Colson, Jr. et al. is a 102(b) reference against the instant application's filing date, a 131 affidavit is moot regarding claim 24. Applicant's assertion on page 28 of each element of claim 24 having support in parent patent 5,790,409 is clearly misleading, as no refrigeration is present in the parent application, nor is there an external lock mounting system. Applicant added his mounting of the lock exterior to the housing in the instant application.

Pearson '232 gains the benefit of the filing date of its CIP ancestor case with respect to matter disclosed in the Pearson '029. The elements of the broad independent claim 45 were disclosed

Dependent claims such as 46-47 do not inherit the priority and invention dates of their base claims merely because applicant wrote the claims as dependent claims rather than independent claims.

Applicant or co-inventors not entitled to inherit the invention date of a claim that happens to placed in the same application.

Whichever of the instant application's five inventor(s) may have subsequently invented the subject of each respective claim depending from claims 24 and 45-whether from independent conception or from subsequently taking R. Michael McGrady's work regarding claims 24 and 45 and subsequently building

upon that-neither takes the affiant's conception date as a possible co-inventor of the claimed subject matter nor benefit from the affiant's conception date by their having their respective claim(s) in the same application as applicant McGrady's two claims. Each claim has its own conception date. None of the other inventors in the instant application have a 131 affidavit in the case antedating any of their respective claims, including the lead inventor of the instant application. Nor do the claims that fail to depend from claims 24 and 45 gain the benefit of the affiant's conception date. Applicant's argument that it would have been obvious for one of his inventors to invent the subject of other claims in the application is ineffective as there is neither any evidence that inventor of each claim conceived the claimed subject matter before the effective date of the applied references nor is there even any evidence that the inventors of each of the remaining claims in the case were not conceived independent of the affiant.

Rejections under 35 USC 112 second paragraph

(Re: cl 27) There is insufficient basis in the claim(s) for the limitation "the determination that the medical item is stored in the interior area", the is not an inherent determination that an item is not inherently stored in interior.

(Re: cl 31) Applicant has specified "the other location" which is specifying one location, not a breadth attempt as applicant now asserts in the brief. If the

“other locations” are relative the interior of the storage locations, applicant should have identified and claimed the interior.

Claim 36 inherits indefinites from base claim 27.

Rejections under 35 USC 102

The cited anticipatory references contain the elements applicant alleges they lack.

Lavigne

Lavigne requires the authorized operator needs use a key to access the medicaments. That Lavigne teaches a narrower selectively locking-that does not remove its teaching from anticipating broader claims of a locking and unlocking under computer control. If applicant prevails on his contention that a drawer reads on the issue of whether a door reads on a drawer as applicant argues, the drawer constitutes a door. However, Lavigne also expressly uses the term "door" (21 : c 3 L 39-50) as well as “drawer” in its medicament access points.

Colson ‘450

Colson teaches identifying the user authorized to administer the medicament and updating the record. Colson teaches updates of the inventory which

demonstrates the storing of the data contents of the dispenser (c5 L 25-27) and displaying that same data on a display device (**c5 L 25-30**).

Pearson '232

A nurse must be an authorized user to enter a password that accesses the system. A plurality of differing passwords are not claimed, an authorized user.

Rejections under 35 USC 103

Applicant has admitted via his restriction petition that his invention groups are not patentably distinct, so should the claims of be obviated upon any affirmation of the rejections claims of elected group I.

Lavigne

The visual indicator is proximate the lock, the placement is for leading the caregiver to the indicated item, so proximate placement of the visual indicator proximate the lock obviates the arbitrary design choice location applicant chose-it still leads the user to the location of the item.

Applicant has alleged absence of some elements from certain references. Those elements are present and discussion of those elements follows.

Lavigne and Nemoto, Keska, Tabate

Nemoto, Keskin et al., and Tabata disclose permanent magnets in the solenoids. A solenoid requires two magnetic field sources to activate use, at least one of which needs to be switchable on or off. The second magnetic source may either be permanent or temporary by using a second set of windings-both are commonly used. It is well known to one of skill in the art that a solenoid may have a permanent magnet, and such use will give predictable successful results and one of skill in the art would know that the solenoid could be designed either with a permanent magnet of plural windings, and that permanent magnets may be used to simplify construction as the alternative to sending a current through the secondary windings to generate the second field.

Higham et al. '456

The locking of the drawers is under computer control, and the visual indicators are proximate the locks, easily placeable in the locks. One of ordinary skill would have no difficulty in arbitrarily moving the visual indicator to any location indicator where the contents are located. If applicant prevails on his contention that a drawer reads on the issue of whether a door reads on a drawer as applicant argues, the drawer constitutes a door. However, Higham et al. 456 also expressly uses doors 62 distinct from drawers in its medicament accessway.

Colson '297

Colson '297 discloses store of identifies users who are authorized and discloses the visual indicator proximate the lock.

Lavigne and Aten

Aten teaches a solenoid with plural windings. Applicant's contention that magnets in solenoids is novel is actually contrary to the norm, most solenoids have magnets and Aten supplies the evidence so typical of applicant's efforts to gain patent claims by claiming elements so well known as to be unspoken and hence unspoken even though likely present in Lavigne.'

Colson '450 and Lavigne

Lavigne teaches placing a visual indicator proximate a locking device (latching).

Blechl and Weinberger

In contrast to applicant's assertion that Blechl is limited its the preferred embodiment using a card, Blechl expressly states other user authorization systems including passwords and personal computers may be to verify the authorized users before dispensing (c8 L 60-68). Blechl separately discloses a door 44 with computer controlled latch (c5 L 22-27), so Blechl discloses doors and drawers

independent of whether applicant's argument on whether a drawer is a door prevails.

Lavigne and Engleson

Lavigne teaches the refrigeration. Engleson teaches reading the medical items Lavigne lacks such that one of ordinary skill in the art would readily know how to apply the reader to read the medical items.

Colson '450 and Iwamoto

Iwamoto teaches the use of a lock under computer control.

Colson '450 and Gombrich

The bar code reader and indicia are machine readable.

Colson '450 and Warren

Warren teaches placing a lock module to the exterior surface of a housing. Colson '450 would have no difficulty applying the teachings of Colson '450 to a door that is on a refrigerator.

Colson '450 and Holmes

Holmes teaches a door sensor responsive to a door opening. Colson '450 would have no difficulty applying the teachings of Holmes to a door that is on a

refrigerator. The readers of Holmes are machine readable and describe their use in reading drawers and the drawer medical items. Holmes label on liner comprising bar code.

Lavigne and Holmes

Holmes teaches locking the door after sensing open for a period time. Artisans of ordinary skill would readily extend the door locking teachings to of Holmes to the refrigerator of Lavigne et al..

Halvorson and McDonald '243

Halvorson discloses identifying the particular user accessing the dispenser. Requiring an authorized access code limits access to authorized users as only an authorized person is given the code. As the Board ruled in the related case, for identifying an authorized user is an obvious variation for Halvorson in its identified user disclosed. McDonald et al. teaches limiting access to authorized users. The combined teachings of Halvorson expressly teach limiting accesses to an identified authorized user. Unlocking the lock is prerequisite to opening the drawer, so unlocking the drawer is taught inherently. As the Halvorson identifies a computer controlled access door 40, the limitation is met and the application of the

teachings from the secondary reference are applicable to the primary reference, would give predictable expectations of success to the engineer of skill in the art.

If applicant prevails on his contention that a drawer reads on the issue of whether a door reads on a drawer as applicant argues, the drawer constitutes a door. However, Halvorson also expressly uses uses access door 40 under computer control.

Halvorson and Weinberger.

The indicator light is clearly a visual indicator and is clearly disclosed by Weinberger in the cite. The sensor unit senses the closing and locks preventing access if the confirmatory entry is omitted. . As the Halvorson identifies an access door, the limitation is met and the application of the teachings from the secondary reference are applicable to the primary reference, would give predictable expectations of success to the engineer of skill in the art.

Colson '450 and Gombrich

The bar code reader and indicia are machine readable.

Lavigne and Iwamoto

The lock is a modular component readily usable on the refrigerated device.

Lavigne and Genest

The reader 12 is clearly machine for machine readable indicia.

Colson, Jr. et al. 450 and MacDonald

The primary reference Colson, Jr. et al. 450 teaches the use of a refrigerator door to access the interior area so MacDonald does not need to disclose a refrigerator door in order to be combined with Colson, Jr. et al. '450..

Colson, Jr. et al. '450 and Weinberger

Weinberger teaches a sensing of an open condition. Upon closing the door, the door of Colson Jr. et '450 is locked.

Colson and Higham et al. '456

The primary reference Colson, Jr. et al. 450 teaches the use of a refrigerator door to access the interior area so Higham et al. '456 does not need to disclose a refrigerator door in order to be combined with Colson, Jr. et al. '450.

Leading rejections on each specific claim

As requested, the following rejections are identified as the strongest rejections on each claim per the Office claim construction-excluding chronological strength issues and disputed claim interpretations: 1) Lavigne et al. ; 2) Colson et al. '450 in view of Lavigne ; 3) Lavigne et al. 4) Colson et al. '450; 5) Lavigne

et in view of Iwamoto ; 6) Lavigne et in view of Iwamoto; 7) Lavigne et in view of Iwamoto ; 8) Lavigne et in view of Iwamoto ; 1) Lavigne et al. ; 10) Lavigne et in view of Iwamoto ; 11) Lavigne et in view of Iwamoto; 12) Colson et al. ‘450; 13) Lavigne et al. in view of Genest 14) Lavigne et al. in view of Genest; 15) Lavigne et al. in view of Genest; 16) Lavigne et al. in view of Engleson ; 17) Lavigne et al. in view of Engleson; 18) Lavigne et al. in view of Engleson ; 19) Lavigne et al. in view of Engleson ; 20) Lavigne et al. in view of Engleson; 21) Colson et al. ‘450; 22) Lavigne et al. in view of Holmes; 23) Lavigne et al. in view of Warren; 24) Lavigne et al.; 25) Lavigne et al.; 26) Lavigne et al.; 27) Lavigne et al.; 28) Colson et al. ‘450 ; 29) Colson et al. ‘450 ; 30) Colson et al. ‘450 in view of Higham et al. ‘456; 31) Colson et al. ‘450 ; 32) Colson et al. ‘450 ; 33) Colson et al. ‘450 ; 34) Lavigne et al. in view of Engleson; 35) Colson et al. ‘450 in view of Gombrich; 36) Lavigne et al. ; 37) Lavigne et al. ;38) Lavigne et al. ;39) Colson et al. ‘450 ; 40) Colson et al. ‘450 in view of Iwamoto; 41) Colson et al. ‘450 in view of McDonald ‘243 ; 42) Lavigne et al. ; 43) Lavigne et al. ; 44) Lavigne et al. ; 45) Halverson in view of McDonald ‘243 ; 46) Higham et al. ‘456 ; 47) Halverson in view of Weinberger; 48) Colson, Jr. et al.; 49) Lavigne.; 50) Lavigne et al. .

(11) Related Proceeding(s) Appendix

The applicant identifies a related appeal in the brief.

Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Examiner Certifies Preceding Word Count: 9606; Line Count: 895.

Respectfully submitted,
/M. E. B./

Michael E. Butler
9/8/2008

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